

## **REMARKS/ARGUMENTS**

Claims 1-42 remain pending in the present application. However, Claims 1-11 have been withdrawn as being directed to a non-elected invention. Claims 12, 23 and 32 have been amended. Applicant respectfully requests entry of these amendments and favorable reconsideration of the claims in view of the following remarks.

### **I. REJECTIONS UNDER 35 U.S.C. § 112**

Claims 12-42 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner requested the Applicant to provide support in the specification for the previous amendment adding the term “only” to the claims.

In response, Applicant points the Examiner to paragraphs [0044] and [0046] of the specification, where it clearly indicates that the quality level of the wireless link is utilized to determine the coding scheme. Paragraph [0044] goes on to indicate that the quality of the entire communication pathway may be considered when selecting the coding scheme. However, the use of the term “may” clearly suggests that this is not required, and as such, only the quality of the wireless link, as now claimed, could be used to determine the coding scheme.

Therefore, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 112 rejections of Claims 12-42.

### **II. REJECTIONS UNDER 35 U.S.C. §103**

Claims 12-16, 19-25, 28-36 and 39-42 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Abaye* (U.S. Patent No. 7,260,060), hereinafter “Abaye”, in view of *Pepin et al.* (U.S. Patent Application Publication No. 2004/0160979), hereinafter “Pepin” and further in view of *Braun* (U.S. Patent Application Publication No. 2004/0203451), hereinafter “Braun.” In addition, Claims 17, 18, 26, 27, 37 and 38 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Abaye, Pepin and Braun and further in view of *Wheeler* (U.S. Patent No. 7,242,932), hereinafter “Wheeler.” Applicant respectfully submits that these rejections are overcome.

Applicant has amended independent Claims 12, 23 and 32 to now similarly recite “*measuring the communication quality level for an uplink path from the WLAN terminal to the AP, the communication quality level being based on latency of the outgoing user communications at the AP; and revising the selected coding scheme from the plurality of supported coding schemes based upon only the communication quality level delivered between the AP and WLAN terminal.*” Support for these amendments can be found at least in Figures 6A, 6B and 7A and the corresponding description. For example, the Examiner is referred to paragraphs [0049], [0057] and [0058] of the present application. Applicant respectfully submits that this feature is not taught or suggested by the combination of Abaye, Pepin and Braun.

As the Examiner admits on page 6 of the Final Office Action, neither Abaye nor Pepin teach or suggest that the coding scheme would be selected based on only the communication quality level delivered between the AP and WLAN terminals. Instead, the Examiner has cited Braun as teaching this feature.

However, Braun teaches that the quality of the downlink (i.e., from the AP to the terminal) is monitored in the terminal and that the downlink quality is used by the terminal to change a coding scheme. *See, paragraphs [0026], [0042] and [0052].* Braun does not teach or suggest that the AP would measure the uplink quality (i.e., from the terminal to the AP) and then select the coding scheme to be used by the terminal based on the uplink quality.

Thus, the combination of Abaye, Pepin and Braun does not teach each and every element of, in the detail of, the claims of the present invention. Therefore, Applicant respectfully submits that independent Claims 12, 23 and 32 (and all claims dependent therefrom) are in condition for allowance. Accordingly, Applicant respectfully requests that the Examiner withdraw the § 103 rejection of Claims 12-42.

**CONCLUSION**

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Garlick Harrison & Markison Deposit Account No. 50-2126 (Ref. BP2970).

Respectfully submitted,

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